

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
King Broadcasting Company)	File Number: EB-01-DV-003
)	NAL/Acct. No. 200232800007
Licensee of Station KBIM(AM))	FRN 0005-0019-46
Roswell, New Mexico)	
Facility ID #34871)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 14, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that King Broadcasting Company ("King"), licensee of station KBIM, Roswell, New Mexico, apparently willfully violated Sections 73.49, 73.1350 and 73.1400 of the Commission's Rules ("Rules") by failing to provide an effective enclosure for the station's antenna structure and failing to establish monitoring procedures to ensure compliance with authorized operating power, mode of operation and AM directional system parameters. We further find that King apparently willfully and repeatedly violated 73.1560 of the Commission's Rules¹ by exceeding nighttime power levels and operating with an improper mode of operation. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that King is apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000).

II. BACKGROUND

2. On December 8, 2000, the Federal Communications Commission's ("FCC") Denver Office received a case referral from the FCC Enforcement Bureau's Technical and Public Safety Division, regarding a complaint alleging that station KBIM(AM) was causing interference to station KPOF(AM) in Denver, Colorado. Station KBIM is authorized to operate on frequency 910 kHz with a nominal daytime power of 5,000 watts using a non-directional antenna and with a nominal nighttime power of 500 watts using a directional antenna.³ According to the terms of the license, the average hours of sunset and sunrise

¹ 47 C.F.R. §§ 73.49, 73.1350, 73.1400, and 73.1560.

² 47 U.S.C. § 503(b).

³ King Broadcasting Company, Station KBIM License File Numbers BZ19790305AF and BR19800527UR (previously

for May 2001, during which KBIM was required to operate pursuant to its nighttime authority, were 7:45 p.m. until 6:00 a.m. for advanced Mountain Daylight Time ("MDT") time.

3. On May 20 and 21, 2001, an Agent from the Denver Office monitored the on-air signal of KBIM. During the period of approximately 5:10 p.m. MDT on May 20, 2001 to 8:58 a.m. MDT on May 21, 2001, the Denver Office Agent took numerous field strength measurements at or near the three licensed monitoring points and at other specified locations. The Agent observed no changes in power level or mode of operation during this period.

4. On May 21, 2001, the Denver Office Agent inspected the KBIM broadcast station at 1301 North Main Street, Roswell, New Mexico, and the KBIM transmitter site near Berrendo Road and U.S. Highways 70 and 85 near Roswell, New Mexico. The inspection revealed KBIM was operating with a 1,000 watt auxiliary transmitter because the 5,000 watt main transmitter was off-the-air for repair. KBIM's contract engineer stated that the station had operated at a power level of approximately 1,050 watts for daytime and nighttime operations for an unspecified period. No logs were available showing power checks and mode of operation changes since March 11, 2001. The CRL System Sequencer used for automated and unattended changes of daytime and nighttime power and mode of operation was turned off. The Sine Systems remote control system was not properly programmed to advise station personnel of any out-of-tolerance condition related to power changes, mode of operation changes or directional antenna parameter monitoring. The station had no established monitoring procedures or schedules to determine compliance with operating power, mode of operation, or directional antenna parameter monitoring and station personnel had failed to perform periodic complete inspections of the transmitting system.

5. The inspection of KBIM's three antenna structures revealed that the protective base fence around the South #1 tower was broken and several wooden pickets were missing which enabled access to the radiating tower.

6. On December 28, 2001, the Denver Office issued a Notice of Violation ("NOV") to King for the violations detected on May 20 and May 21, 2001, including among others, the failure to comply with the station's authorized directional parameters and power levels, failure to maintain transmitter control and inadequate base fencing. On January 11, 2002, King submitted a reply to the NOV. King stated that KBIM operated outside authorized tolerances and failed to change power and antenna patterns as required by its license because the station main transmitter had failed and the station was operating with a 1,000 watt auxiliary transmitter that could not be remotely controlled. King noted that subsequent to the inspection, a new solid state AM transmitter was installed that was capable of full daytime power of 5,000 watts and nighttime power of 500 watts. The output power of the auxiliary transmitter was permanently lowered to 500 watts to serve as a back-up. The remote control system was programmed with the proper commands for sunrise and sunset specified on the station's authorization and an uninterruptable power supply was installed for the remote control. The old wooden fence was replaced with a new chain link fence with locked gates. Regular transmission system inspections were instituted and steps were taken to correct the other rule violations noted in the NOV.

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully and repeatedly fails to comply substantially with the terms and conditions of any license, or willfully and repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵

8. A broadcast station licensee is responsible for maintaining and operating the station in compliance with the technical rules and in accordance with the terms of the station license. Licensees must maintain and control operating parameters such as output power, level of modulation and directional pattern. In particular, Section 73.1350(c)(1) of the Rules states in part that, "[m]onitoring procedures and schedules must enable the licensee to determine compliance with §73.1560 regarding operating power, and AM mode of operation . . . and §73.69 regarding the parameters of an AM directional system." Section 73.1400 of the Rules states in part that, "[t]he licensee of an AM . . . station is responsible for assuring that at all times the station operates within tolerance specified by applicable technical rules contained in this part and in accordance with the terms of the station authorization. . . ." Section 73.1560(a) of the Rules states in part that, "[t]he antenna input power of an AM station as determined by the procedures specified in §73.51 must be maintained as near as is practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power . . . whenever the transmitter of an AM station cannot be placed into the specified operating mode at the time required, transmissions must be immediately terminated"

9. On May 20 and May 21, 2001, KBIM failed to change to the proper mode of operation at night. KBIM exceeded nighttime power limits by over 200% and operated a non-directional antenna during nighttime when a directional antenna was required. In addition, KBIM's directional antenna parameters were out-of-tolerance. The remote control system failed to properly detect out-of-tolerance conditions on daytime and nighttime power levels, proper modes of operation and directional antenna parameters. KBIM had no established monitoring schedules or procedures to determine compliance with operating power, mode of operation, and parameters of the AM directional system, was unable to identify when the last complete transmitting system inspection had been conducted and no chief operator review of station logs were observed for the period March 11 through May 19, 2001.

10. Section 73.49 of the Rules states in part that "[a]ntenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures." KBIM's license describes the antenna system as a series excited vertical radiator. A "series excited" radiator may also be described as a "series fed" radiator. The AM transmission fencing requirements thus apply to station KBIM. On May 21, 2001, an inspection of KBIM's three antenna structures revealed that the South #1 tower's protective base fence was broken and several wooden pickets were missing which enabled access to the radiating tower.

⁴ 47 U.S.C. § 503(b).

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

Effective base fencing is an important safety requirement. AM series fed antenna structures radiate energy that renders any physical contact with the antenna structure itself extremely dangerous. In addition, AM antenna structures are capable of generating radio frequency fields at the base of the antenna structure that may exceed the Commission's maximum permissible exposure guidelines. Effective base fencing is thus important to prevent possible contact with the radiating structure and excessive radio frequency radiation exposure.

11. Based on the evidence before us, we find that King willfully violated Sections 73.49, 73.1350, and 73.1400 of the Commission's Rules by (1) failing to provide an effective locked fence enclosing the station's antenna structure and (2) failing to establish monitoring procedures to ensure compliance with authorized operating power, mode of operation and AM directional system parameters. In addition, King willfully and repeatedly violated 73.1560 of the Commission's Rules by exceeding nighttime power levels and operating with an improper mode of operation.

12. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁶ for failure to maintain directional pattern within prescribed parameters is \$7,000; for failure to comply with AM tower fencing is \$7,000; for exceeding power limits is \$4,000; and for failure to comply with transmitter control and metering requirements is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁷ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$21,000 forfeiture is warranted.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, King Broadcasting Company, is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-one thousand dollars (\$21,000) for violations of Sections 73.49, 73.1350, 73.1400, and 73.1560 of the Rules.⁸

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, King Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.49, 73.1350, 73.1400, and 73.1560.

Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) referenced above and also must note the NAL/Acct. No. referenced in the caption.

16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 4313, Return Receipt Requested, to King Broadcasting Company, P. O. Box 2308, Roswell, NM 88202.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

⁹ See 47 C.F.R. § 1.1914.